

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(1711 Willis Drive)	*	OFFICE OF
13 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Council District		
Harold John and Marguerite McKenna,	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	<b>Case No. 2019-0483-SPHA</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Harold John McKenna, legal owner (“Petitioner”).<sup>1</sup> The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm that a merger did not take place between these lots (29 and 30) and (27 and 28), the adjacent lots. In addition, a Petition for Variance was filed pursuant to BCZR §§1B02.3.C.1 and 301.1: (1) to permit an existing dwelling on existing Lots (29 and 30) with an area of 10,045 sq. ft. in lieu of the required 20,000 sq. ft.; (2) to permit an existing front yard setback of 35 ft. and an existing rear yard setback of 37 ft. in lieu of the proposed 40 ft., respectively; and (3) to permit an existing deck with a rear yard setback of 23 ft. in lieu of the required 30 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Harold McKenna appeared in support of the requests. He was represented by Joshua Hoffman, Esq. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee

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<sup>1</sup> As explained in the companion case, Case No. 2019-0482-SPHA, Mr. McKenna’s wife, Margeruite McKenna, recently passed away and he has inherited all four parcels in question in fee simple.

("ZAC") comment was received from the Department of Planning ("DOP"). That agency did not oppose the request.

### SPECIAL HEARING

For the reasons set forth in companion Case No. 2019-0482-SPHA, no merger occurred between Lots 29 and 30 and Lots 27 and 28. Further, the DOP concurs that no merger was observed when they conducted their site visit.

### VARIANCE

As to the variance, it requires a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Lots 29 and 30 are exceptionally small lots for a DR2 zone. In addition, Lots 29 and 30 back to a church property with a long narrow parking lot. As such, the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty and extreme hardship because he moved into the existing residence in 1979 and he would essentially have to raze the structure and rebuild an even smaller residence in order to now meet the 40 foot rear and front setbacks. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition. As noted above, the slightly reduced rear setbacks will not adversely impact the adjoining neighbor to the rear because it is a church with a long parking lot in the rear.

THEREFORE, IT IS ORDERED this **13th** day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to confirm that a merger did not take place between these lots (29 and 30) and (27 and 28), the adjacent lots, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: 1) to permit an existing dwelling on existing Lots (29 and 30) with an area of 10,045 sq. ft. in lieu of the required 20,000 sq. ft.; (2) to permit an existing front yard setback of 35 ft. and an existing rear yard setback of 37 ft. in lieu of the proposed 40 ft., respectively; and (3) to permit an existing deck with a rear yard setback of 23 ft. in lieu of the required 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

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